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Act of 1949, as amended

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¹ The Act does not include a name for sections 6 and 7. The names used in this table of contents are descriptive of the contents of those sections.

September 1970

CENTRAL INTELLIGENCE AGENCY ACT OF 1949,
as amended

(63 Stat. 208, P.L. 81-110, June 20, 1949;¹
64 Stat. 450, P.L. 81-697, August 16, 1950;
65 Stat. 89, P.L. 82-53, June 26, 1951;
68 Stat. 1105, P.L. 83-763, September 1, 1954;
72 Stat. 327, P.L. 85-507, July 7, 1958;
74 Stat. 792, P.L. 86-707, September 6, 1960;
78 Stat. 484, P.L. 88-448, August 19, 1964)

AN ACT

To provide for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. When used in sections 403b-403j of this title,² the term—

- (a) "Agency" means the Central Intelligence Agency;
- (b) "Director" means the Director of Central Intelligence;
- (c) "Government agency" means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.³

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403a.

SEAL OF OFFICE

SEC. 2. The Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve,⁴ and judicial notice shall be taken thereof.

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403b.

PROCUREMENT AUTHORITIES

SEC. 3. (a) In the performance of its functions the Central Intelligence Agency is authorized to exercise the authorities contained in sections [2(c)(1), (2), (3), (4), (5), (6), (10), (12), (15), (17),⁵ and sections 3, 4, 5, 6, and 10⁶ of the Armed Services

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403c.

Procurement Act of 1947 (Public Law 413, Eightieth Congress, second session)].⁷

(b) In the exercise of the authorities granted in subsection (a) of this section, the term "Agency head" shall mean the Director, the Deputy Director, or the Executive of the Agency.⁸

(c) The determinations and decisions provided in subsection (a) of this section to be made by the Agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as provided in subsection (d) of this section, the Agency head is authorized to delegate his powers provided in this section, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the Agency.⁹

(d) The power of the Agency head to make the determinations or decisions specified in [paragraphs (12) and (15) of section 2 (c) and section 5 (a) of the Armed Services Procurement Act of 1947]¹⁰ shall not be delegable. Each determination or decision required by [paragraphs (12) and (15) of section 2 (c), by section 4 or by section 5 (a) of the Armed Services Procurement Act of 1947],¹¹ shall be based upon written findings made by the official making such determinations, which findings shall be final and shall be available within the Agency for a period of at least six years following the date of the determination.

TRAVEL, ALLOWANCES, AND RELATED EXPENSES

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403a. SEC. 4.¹² Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned to duty stations¹³ outside the several states of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia,¹⁴ shall—

(1) (A) pay the travel¹⁵ expenses of officers and employees of the Agency, including expenses incurred while traveling pursuant to authorized¹⁶ home leave;

(B) pay the travel expenses of members of the family of an officer or employee of the Agency when proceeding to or returning from his post of duty; accompanying him on authorized home leave; or otherwise traveling in accordance with authority granted pursuant to the terms of sections 403a-403j¹⁷ of this title or any other Act;

(C) pay the cost of transporting the furniture and household and personal effects of an officer or employee of the Agency to his successive posts of duty and, on the termination of his services, to his

residence at time of appointment or to a point not more distant, or, upon retirement, to the place where he will reside;

(D) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects¹⁸ of an officer or employee of the Agency, when he is absent from his post of assignment under orders, or when he is assigned to a post to which he cannot take or at which he is unable to use such furniture and household and personal effects, or when it is in the public interest or more economical to authorize storage; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations,¹⁹ when not otherwise fixed by law;²⁰

(E) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Agency in connection with assignment or transfer to a new post, from the date of his departure from his last post or from the date of his departure from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of residence quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Agency, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations,²¹ when not otherwise fixed by law;²²

(F) pay the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Agency and his furniture and household and personal effects, including automobiles, from a post at which, because of the prevalence of disturbed conditions, there is imminent danger to life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the ap-

appropriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders, notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3) (A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each officer or employee of the Agency who was a resident of the United States (as described above) at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter.²³

(B) While in the United States (as described in paragraph (3) (A) of this section) on leave, the service of any officer or employee shall be available for work or duties in the Agency or elsewhere as the Director may prescribe; and the time of such work or duty shall not be counted as leave.²⁴

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3) (A) of this section), leave of absence granted shall be exclusive of the time actually and necessarily occupied in going to and from the United States (as so described) and such time as may be necessarily occupied in awaiting transportation.²⁵

(4) Notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Agency, a privately owned motor vehicle in any case in which it shall be determined that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, and pay the costs of such transportation. Not more than one motor vehicle of any officer or employee of the Agency may be transported under authority of this paragraph during any four-year period, except that, as a replacement for such motor vehicle, one additional motor vehicle of any such officer or employee may be so transported during such period upon approval, in advance, by the Director and upon a determination, in advance, by the Director that such replacement is necessary for reasons beyond the control of the officer or employee and is in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this paragraph of a privately owned motor vehicle of any officer or employee

who has remained in continuous service outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Director in accordance with this paragraph.²⁶

(5) (A) In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means he shall deem appropriate and without regard to the Standardized Government Travel Regulations and section 73b [now section 5731 (a)] of Title 5,²⁷ to the nearest locality where a suitable hospital or clinic exists and on his recovery pay for the travel expenses of his return to his post of duty. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant;

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in his opinion, sufficient personnel is employed to warrant such a station: *Provided*, That, in his opinion, it is not feasible to utilize an existing facility;

(C) In the event of illness or injury requiring hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic;

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculations or vaccinations to such officers or employees.

(6) Pay the costs of preparing and transporting the remains of an officer or employee of the Agency or a member of his family who may die while in travel status or abroad, to his home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.

(7) Pay the costs of travel of new appointees and their dependents, and the transportation of their household goods and personal effects, from places of actual residence in foreign countries at time

of appointment to places of employment and return to their actual residences at the time of appointment or a point not more distant: *Provided*, That such appointees agree in writing to remain with the United States Government for a period of not less than twelve months from the time of appointment.

Violation of such agreement for personal convenience of an employee or because of separation for misconduct will bar such return payments and, if determined by the Director or his designee to be in the best interests of the United States, any money expended by the United States on account of such travel and transportation shall be considered as a debt due by the individual concerned to the United States.²⁸

GENERAL AUTHORITIES

SEC. 5. In the performance of its functions, the Central Intelligence Agency is authorized to ²⁹—

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget,³⁰ for the performance of any of the functions or activities authorized under sections 403 and 405 of this title,³¹ and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a-403j of this title³² without regard to limitations of appropriations from which transferred;

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403f.

(b) Exchange funds without regard to section 543 of Title 31;³³

(c) Reimburse other Government agencies for services of personnel assigned to the Agency, and such other Government agencies are authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or employee for duty with the Agency;

(d) Authorize couriers and guards designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security;

(e) Make alterations, improvements, and repairs on premises rented by the Agency, and pay rent therefor without regard to limitations on expenditures contained in the Act of June 30, 1932, as amended;³⁴ *Provided*, That in each case the Director shall certify that exception from such limitations is necessary to the successful

performance of the Agency's functions or to the security of its activities.³⁵

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403g.

SEC. 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title³⁶ that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5,³⁷ and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5.³⁸

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403h.

SEC. 7. Whenever the Director, the Attorney General, and the Commissioner of Immigration shall determine that the entry of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be given entry into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations,³⁹ or to the failure to comply with such laws and regulations pertaining to admissibility: *Provided*, That the number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.⁴⁰

APPROPRIATIONS

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403j.

SEC. 8. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions,⁴¹ including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service programs as authorized by section 150 [now section 7901] of Title 5;⁴² rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-send-

ing equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment, where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of section 14 of Title 6;⁴³ payment of claims pursuant to Title 28; acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to sections 259 and 267 of Title 40;⁴⁴ repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.⁴⁵

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds;⁴⁶ and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director⁴⁷ and every such certificate shall be deemed a sufficient voucher for the amount therein certified.⁴⁸

SEPARABILITY OF PROVISIONS

SEC. 9.⁴⁹ If any provision of this Act, or the application of such provision to any person or circumstances, is held invalid, the

remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SHORT TITLE

SEC. 10. This Act may be cited as the "Central Intelligence Agency Act of 1949."

Approved June 20, 1949.

Central Intelligence Agency Act Footnotes

¹Legislative history materials include:

H.R. Rep. No. 160, 81st Cong., 1st Sess., February 24, 1949; and
Sen. Rep. No. 106, 81st Cong., 1st Sess., March 10, 1949.

²These sections of Title 50 are the Central Intelligence Agency Act.

³The 1949 Act also included a section 1(d): "'Continental United States' means the States and the District of Columbia." It was repealed by section 511(a) of the Overseas Differentials and Allowances Act (74 Stat. 792, P.L. 86-707, September 6, 1960). This repeal of the definition of "Continental United States" was accompanied by an amendment to the section which now is section 4 concerning the geographical application of that section. See Footnote 14. For a statement of the general background and purpose of the Overseas Differentials and Allowances Act see Footnote 13.

⁴The Director has caused a seal of office to be made for the Central Intelligence Agency and President Truman approved it by his issuance of Executive Order 10111 (3 C.F.R., 1949-1953 Comp., p. 302, February 17, 1950):

Executive Order 10111 ESTABLISHING A SEAL FOR THE CENTRAL INTELLIGENCE AGENCY

WHEREAS section 2 of the Central Intelligence Agency Act of 1949, approved June 20, 1949 (Public Law 110-81st Congress), provides, in part, that the Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency of such design as the President shall approve; and

WHEREAS the Director of Central Intelligence has caused to be made and has recommended that I approve a seal of office for the Central Intelligence Agency the design of which accompanies and is hereby made a part of this order, and which is described in heraldic terms as follows:

SHIELD: Argent, a compass rose of sixteen points gules.

CREST: On a wreath argent and gules an American bald eagle's head erased proper.

Below the shield on a gold color scroll the inscription "United States of America" in red letters, and encircling the shield and crest at the top the inscription "Central Intelligence Agency" in white letters.

All on a circular blue background with a narrow gold edge;

AND WHEREAS it appears that such seal is of suitable design and is appropriate for establishment as the official seal of the Central Intelligence Agency;

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(Footnote 4—Continued)

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by the said section 2 of the Central Intelligence Agency Act of 1949, I hereby approve such seal as the official seal of the Central Intelligence Agency.

Harry S. Truman

The White House,
February 17, 1950.

A facsimile of the seal appears below the President's signature on the Executive Order, and is reproduced on the binder and the TITLE PAGE of this manual.

*These subsections of the Armed Services Procurement Act of 1947 (62 Stat. 21, P.L. 80-413, February 19, 1948, 10 U.S.C.A. 2301 et seq.), thus are authority for the Agency to negotiate purchases and contracts for supplies and services, without advertising, if—

- (1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;
- (2) the public exigency will not admit of the delay incident to advertising;
- (3) the aggregate amount involved does not exceed \$1,000;
- (4) for personal or professional services;
- (5) for any service to be rendered by any university, college, or other educational institution;
- (6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;
- (10) for supplies or services for which it is impracticable to secure competition;
- (12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;
- (15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier;
- (17) otherwise authorized by law.

(Footnote 5—Continued)

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377, P.L. 81-152, June 30, 1949, 40 U.S.C.A. 471 et seq.) in essence re-enacted the Armed Services Procurement Act to apply to the government generally. It also provides that nothing therein "shall impair or affect any authority of . . . the Central Intelligence Agency" (40 U.S.C.A. 474(17); see also page 112 of PART VI). Thus, procurement authority available to CIA includes the listed sections of the Armed Services Procurement Act, as well as the Federal Property and Administrative Services Act. Further, any amendments to the latter would be applicable with respect to CIA procurement. Since section 3(a) of the CIA Act adopts the listed provisions of the Armed Services Procurement Act in existence at the time of the enactment of the CIA Act, any subsequent amendment of any of those provisions would not be applicable automatically to CIA.

A 1965 amendment to the Federal Property and Administrative Services Act concerns automatic data processing equipment. See excerpts from that amendment and accompanying narrative at page 111 of PART VI, as to its application to national security and to CIA interests.

* These sections of the Armed Services Procurement Act (the Act is cited at Footnote 5) prescribe rules with respect to advertising for bids, types of contracts which may be negotiated, advance payments, liquidated damages and procurement for other agencies and joint procurement. Authorities similar to all of these, except procurement for other agencies and joint procurement, also are provided for the government generally by the Federal Property and Administrative Services Act (Footnote 5).

* The bracketed language is from section 3 as enacted in the CIA Act of 1949, rather than from section 3 as it has been codified at 50 U.S.C.A. 403c. As indicated in the PREFACE, section 3 is one of only two instances in the *Guide* in which a statute is set out in the language of the original act, rather than the language by which the act now is codified in the United States Code. This is necessary because of the following factor. As indicated in Footnote 5, only the listed Armed Services Procurement Act sections in force at the time of the enactment of the CIA Act, and not any subsequent amendments to those sections, are authorities available to CIA. Since some of the sections listed in 50 U.S.C.A. 403c. are amended sections of the Armed Services Procurement Act of 1947, a listing of those sections would be a listing of some procurement authorities which had not been made applicable to CIA.

* At the time of the enactment of the CIA Act, the Executive was the principal staff officer of the Agency charged with overall coordination of Agency activities. By a reorganization of December 1, 1950, the Deputy Director for Administration was designated the Executive, for the purpose of exercising those Agency powers specifically delegated by law to the Executive. The office of the Deputy Director (Administration) was replaced by the office of the Deputy Director (Support), and the functions of the former transferred, effective February 3, 1955. The title was changed to Deputy Director for Support in August 1963.

February 1971

*Sections 3(c) and (d) are nearly identical with corresponding provisions of the Armed Services Procurement Act and the Federal Property and Administrative Services Act (Footnote 5).

¹⁰ Paragraphs (12) and (15) of section 2(c) of the Armed Services Procurement Act of 1947 are set out at items (12) and (15) in Footnote 5. Section 5(a) of that Act authorizes agency heads to make advance payments under negotiated contracts under certain circumstances and provided the agency head "determines that provision for such advance payments is in the public interest or in the interest of the national defense and is necessary and appropriate in order to procure required supplies or services under the contract."

The language keyed to this Footnote is in brackets for the reason set forth at Footnote 7.

¹¹ Footnote 10 is applicable also with respect to all the language keyed to this Footnote, except the reference to "section 4" of the Armed Services Procurement Act. The determinations and decisions required by section 4 of that Act are: (a) that contracts negotiated pursuant to section 2(c) are to contain a suitable warranty by the contractor "as determined by the agency head" that no person or selling agency was employed or retained by the contractor to solicit or secure the contract for a commission, percentage, brokerage, or contingent fee, except "bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business"; and (b) that in the case of a cost-plus-a-fixed-fee contract, a fee in excess of 10 per centum may not be allowed except upon certain determinations by the agency head. Also, the per centum is to be based on the "estimated cost of the contract" as determined by the agency head at the time of entering into such contract. Additionally, neither a cost, nor a cost-plus-a-fixed-fee contract, nor an incentive type contract may be used "unless the agency head determines that such method of contracting is likely to be less costly than other methods or that it is impractical to secure supplies or services of the kind or quality required without the use of" a contract of one of those types.

¹² Section 4, as enacted in 1949, provided:

EDUCATION AND TRAINING

SEC. 4. (a) Any officer or employee of the Agency may be assigned or detailed for special instruction, research, or training, at or with domestic or foreign public or private institutions; trade, labor, agricultural, or scientific associations; courses or training programs under the National Military Establishment; or commercial firms.

(b) The Agency shall, under such regulations as the Director may prescribe, pay the tuition and other expenses of officers and employees of the Agency assigned or detailed in accordance with provisions of subsection (a) of this section, in addition to the pay and allowances to which such officers and employees may be otherwise entitled.

(Footnote 12—Continued)

Section 4 was repealed, and sections 5, 6, 7, 8, 10, 11 and 12 were redesignated as sections 4, 5, 6, 7, 8, 9 and 10, respectively, by section 21 of the Government Employees Training Act (72 Stat. 327, P.L. 85-507, July 7, 1958). As to the original section 9, see Footnote 49. (See, at page 169 of PART VII, Executive Order 10805 exempting CIA from certain provisions of the Government Employees Training Act.)

¹³ As enacted in the 1949 Act, this provision read "permanent-duty stations." The word "permanent" was deleted by section 323(a) of the Overseas Differentials and Allowances Act (Footnote 3).

The current section 4 of the CIA Act was patterned on the travel and benefits provisions of the Foreign Service Act of 1946 (60 Stat. 999, P.L. 79-724, August 13, 1946, 22 U.S.C.A. 801 et seq.). With later amendments to the Foreign Service Act, section 4 had become somewhat out of date. Additionally, provisions for overseas travel and allowances for government generally were not adequate for the increasing numbers of personnel from various government agencies going abroad. Therefore, in early 1955, the House Post Office and Civil Service Committee instituted a complete revamping of the law in this area for government generally. Recognizing the wisdom of having uniform travel and allowances for government employees assigned abroad, the Committee entertained a request both from the Department of State for the Foreign Service and from CIA to consider a uniform overseas travel and allowances act for government generally, including the Foreign Service and CIA. The resulting Overseas Differentials and Allowances Act in 1960, amending the Foreign Service Act and sections 1 and 4 of the CIA Act, as amended, and other laws, thus originated in the House Post Office and Civil Service Committee, rather than in the House Foreign Affairs and Armed Services Committees.

¹⁴ As enacted in the 1949 Act, this provision read "outside the continental United States, its territories, and possessions." The current language was enacted by section 323(a) of the Overseas Differentials and Allowances Act (Footnote 3). This amendment was accompanied by the repeal of section 1(d), which defined "Continental United States." See Footnote 3.

¹⁵ Attachment A of Bureau of the Budget Circular No. A-56 prescribes regulations governing travel and transportation expenses of government employees generally. By its terms it does not apply to "officers and employees transferred in accordance with the provisions of the Central Intelligence Agency Act of 1949, as amended." Since section 4 of the CIA Act provides authority to pay travel and transportation expenses of CIA personnel assigned to duty stations outside the 48 states and the District of Columbia, travel and transportation expenses for such persons may be paid under the authority of section 4, and Circular A-56 need not be utilized.

¹⁶ As enacted in the 1949 Act, this provision read "orders issued by the Director in accordance with the provisions of section 5(a)(3) with regard to the granting of" home leave. The quoted language was deleted by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

¹⁷ These sections of Title 50 are the Central Intelligence Agency Act.

¹⁸ The term "furniture and household and personal effects," as used in paragraphs (1)(D) and (E) (but not in (1)(C) or (F)) is defined by section 301(d) of the Overseas Differentials and Allowances Act (Footnote 3) to mean "such personal property of an employee and the dependents of such employee as . . . the Director of Central Intelligence . . . shall by regulation authorize to be transported or stored under the amendments made by" that Act to paragraph (1)(D) and (E) "(including in emergencies, motor vehicles authorized to be shipped at Government expense)."

¹⁹ Section 301(d) of the Overseas Differentials and Allowances Act (Footnote 3) provides that motor vehicles authorized, in emergencies, to be shipped at Government expense are "excluded from the weight and volume limitations prescribed by" paragraphs (1)(D) and (E) of section 4.

²⁰ Paragraph (1)(D), as enacted in the 1949 Act, read: "pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency who is absent under orders from his usual post of duty, or who is assigned to a post to which, because of emergency conditions, he cannot take or at which he is unable to use, his furniture and household and personal effects." It was amended to the current language by section 301(b) of the Overseas Differentials and Allowances Act (Footnote 3).

²¹ See Footnote 19.

²² Paragraph (1)(E), as enacted in the 1949 Act, read: "pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency on first arrival at a post for a period not in excess of three months after such first arrival at such post or until the establishment of residence quarters, whichever shall be shorter." It was amended to the current language by section 301(b) of the Overseas Differentials and Allowances Act (Footnote 3).

²³ Paragraph (3)(A), as enacted in the 1949 Act, read: "Order to the United States or its Territories and possessions on leave provided for in 5 U.S.C. 30, 30a, 30b, or as such sections may hereafter be amended, every officer and employee of the agency who was a resident of the United States or its Territories and possessions at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter: *Provided*, That such officer or employee has accrued to his credit at the time of such order, annual leave sufficient to carry him in a pay status while in the United States for at least a thirty-day period." It was amended to the current language by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

²⁴ Paragraph (3)(B), as enacted in the 1949 Act, read: "While in the continental United States on leave, the service of any officer or employee shall not be available for work or duties except in the agency or for training

(Footnote 24—Continued)

or for reorientation for work; and the time of such work or duty shall not be counted as leave." It was amended to the current language by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

²³ By an amendment enacted in section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3), the words "(as described in paragraph (3)(A) of this section)" and "(as so described)" replace, in each instance, the words "or its Territories and possessions" as enacted in paragraph (3)(C) of the 1949 Act.

²⁴ In the 1949 Act the word "automobile" appeared in two places in paragraph (C)(4). That word was replaced by the words "motor vehicle", the final two sentences of the paragraph were added, and minor editorial changes were made by an amendment enacted in section 323(b) of the Overseas Differentials and Allowances Act (Footnote 3).

²⁵ Section 5731(a) limits transportation expenditure to the rate of the lowest first class rate by the transportation facility used unless lowest first class accommodations are not available, or approval for use of a compartment or other accommodation "is required for security purposes."

²⁶ Section 5 of the 1949 Act consisted of subsections (a) and (b). By the 1958 repeal of section 4 and consequent renumbering, section 5 became section 4. See Footnote 12. Subsection (b) of the renumbered section 4, which together with subsection designation "(a)", were repealed by section 511(a) of the Overseas Differentials and Allowances Act (Footnote 3), provided:

(b) In accordance with such regulations as the President may prescribe and notwithstanding the provisions of section 1765 of the Revised Statutes (5 U.S.C. 70), the Director is authorized to grant to any officer or employee of the Agency allowances in accordance with the provisions of section 901(1) and 901(2) of the Foreign Service Act of 1946.

With the repeal of section 4(b), the executive order (Executive Order 10100 (3 C.F.R., 1949-1953 Comp., p. 295, January 28, 1950)) which implemented the section no longer has legal effect.

Under an amendment to section 912 of the Internal Revenue Code of 1954, enacted by section 523(a) of the Overseas Differentials and Allowances Act, "amounts received as allowances or otherwise" under section 4 of the CIA Act of 1949 "shall not be included in gross income and shall be exempt from" income taxation. It would appear that any per diem allowances in lieu of expenses paid under section 4 are exempt from income taxation by current Internal Revenue Regulations and Rulings and that the above amendment to the Internal Revenue Code is not necessary to such exemption. In view of the repeal of that portion of the renumbered section 4 which authorized the payment of certain allowances, namely subsection (b) (see above in this Footnote), it would appear that the only allowances exempted by the amendment to the Internal Revenue Code are per diem allowances.

²⁰ See at Footnote 46 a summary of a case in which a United States District Court dismissed a suit by a former Agency employee challenging the constitutionality of section 5 and section 8(b) of the CIA Act.

²¹ Funds transferred under this authority and pursuant to a specific intra-government agreement thereby are obligated for use in furtherance of the specific project.

²² These sections of Title 50 are sections 102 and 303 of the National Security Act.

²³ These sections of Title 50 are the Central Intelligence Agency Act.

²⁴ Section 543 prohibits the exchange of funds by disbursing officers for other than gold, silver or United States notes. Section 5(b) of the CIA Act thus permits Agency disbursing officers to procure foreign funds by exchange or purchase.

²⁵ The cited portion of the amended 1932 act (40 U.S.C.A. 278a) limits expenditures for the rental of premises, or for altering, improving or repairing rental premises, not to exceed 15 per centum of the fair market value of the premises or 25 per centum of the amount of the rent for the first year, respectively.

²⁶ The 1949 Act was amended by P.L. 82-53 (65 Stat. 89, June 26, 1951) to add a subsection (f) to what is now section 5, as follows:

(f)(1) Notwithstanding section 2 of the Act of July 31, 1894 (28 Stat. 205), as amended (5 U.S.C.A. 62), or any other law prohibiting the employment of any retired commissioned or warrant officer of the armed services, the Agency is hereby authorized to employ and to pay the compensation of not more than fifteen retired officers or warrant officers of the armed services while performing service for the Agency, but while so serving such retired officer or warrant officer will be entitled to receive only the compensation of his position with the Agency, or his retired pay, whichever he may elect.

(2) Nothing in this section shall limit or affect the appointment of and payment of compensation to retired officers or warrant officers not presently or hereafter prohibited by law.

Subsection (f) was repealed by section 402(a) of the Dual Compensation Act (78 Stat. 484, P.L. 88-448, August 19, 1964).

²⁷ This section of Title 50 is section 102(d)(3) of the National Security Act of 1947.

²⁸ Section 654 required the Civil Service Commission to publish annually a list of all persons "occupying administrative and supervisory positions" in the government. The list was to include also the official title and compensation of each person listed. Section 654 has been repealed by P.L. 86-626 (74 Stat. 425, July 12, 1960).

³⁸ Section 947(b) directed the Bureau of the Budget to determine quarterly the number of full-time employees required by each department and agency "for the proper and efficient performances of the authorized functions of" the department or agency and provided that excess personnel were to be released. Such determinations by the Director of the Bureau of the Budget and the numbers of employees paid in violation of his orders were to be reported to Congress quarterly by the Director of the Bureau of the Budget. Section 947(b) has been repealed by section 301 of P.L. 81-784 (64 Stat. 832, September 12, 1950).

³⁹ The laws concerning admissibility are sections 211 et seq. of the Immigration and Nationality Act of 1952 (66 Stat. 163, P.L. 82-414, June 27, 1952), as amended, now codified at Title 8, Chapter 12, Subchapter II, Part II of the United States Code. The regulations concerning admissibility are those issued by the Attorney General and published at Title 8, Chapter 1, Subchapter B of the Code of Federal Regulations.

⁴⁰ A United States Court of Appeals has cited this section as indicating that Congress has recognized that "aliens within this country are sources of foreign intelligence" (*Heine v. Raus*, 399 F. 2d. 785, July 22, 1968). See Footnote 21, PART I.

⁴¹ Section 8 is the permanent law which authorizes expenditures by CIA. Because the phrase "for purposes necessary to carry out its functions, including," is an inclusive concept, that language authorizes expenditures for purposes additional to those named in paragraphs (1) and (2) of subsection 8(a).

Among other purposes for which expenditures are authorized by section 8(a), that section is the authority for the employment and compensation of personnel. See in this connection the excerpt from the Classification Act of 1949 at page 114 of PART VI. A Comptroller General decision (31 Comp. Gen. 191, November 21, 1951, summarized at page 190 of PART VIII) has held that retroactive salary "increases by the Central Intelligence Agency are not 'necessary to carry out its functions' within the meaning of the said section 10 [now section 8] and therefore, would be subject to legal objection." But see a later decision upholding retroactive pay increases under circumstances which had not existed at the time of the 1951 opinion (44 Comp. Gen. 89, August 20, 1964) at page 198 of PART VIII.

The language of section 8(a)(1) was patterned, in part, on statutes making appropriations for the Office of Strategic Services.

⁴² Section 7901 provides in part:

(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

⁴³ Section 14 of Title 6 authorizes the purchase, under certain circumstances and subject to certain requirements, of surety bonds covering civilian officers and employees and military personnel "who are required by law or administrative ruling to be bonded."

⁴⁴ Section 259 prohibited contracts and payments for public buildings sites in excess of specific appropriations. Section 267 provided expenditure for public buildings until after the General Services Administration had prepared and the head of the agency which was to occupy the building had approved sketch plans and cost estimates. Sections 259 and 267 were repealed, subject to a savings clause applicable to certain projects specified by the repealing legislation, by section 17 of P.L. 86-249 (73 Stat. 479, September 9, 1959).

⁴⁵ Utilization of this authority enables the Agency to keep abreast of new legislation concerning travel and other fringe benefits which are deemed appropriate to apply to Agency employees.

⁴⁶ *Richardson v. Sokol*

This part of section 8(b), and section 5, were challenged in a law suit brought in 1968 by a former Agency employee in the United States District Court for the Western District of Pennsylvania against the Commissioner of the Bureau of Accounts, Treasury Department. The plaintiff sought a declaratory judgment that sections 5 and 8(b) were repugnant to Article I, Section 9, Clause 7, of the United States Constitution. Clause 7 provides that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." Plaintiff in effect contended that the named sections of the CIA Act operate to prevent the Commissioner from complying with Clause 7. The Court granted defendant's motion to dismiss. The Court quoted a leading Supreme Court decision that courts have no power *per se* to review and annul acts of Congress on the grounds that they are unconstitutional. That question, the Supreme Court said, may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Further, the Supreme Court held, the plaintiff must show not only that the statute is invalid, but also that he has sustained, or is immediately in danger of sustaining, some direct injury as a result of the enforcement of the statute, and not merely that he suffers in some indefinite way in common with people generally. In the 1968 case involving the CIA Act, the District Court held that the plaintiff asserted no special injury to himself resulting from the defendant's alleged failure to publish the required report. He did allege in oral argument "that his purported injury is based solely on his contention that defendant's compliance with the Act prevents plaintiff from gathering evidence in support of his proposition that there is a direct correlation between international discord and the amounts expended by the United States with reference to foreign affairs." The Court found such "injury insufficient to establish plaintiff's standing to raise a justiciable controversy" and dismissed the complaint. *Richardson v. Sokol*, 285 F. Supp. 866, May 8, 1968.

On appeal, the United States Court of Appeals, Third Circuit, affirmed, but on different grounds. The Court noted that under the relevant statute, district courts have original jurisdiction of civil actions only "wherein the matter in controversy exceeds the sum or value of \$10,000." Nowhere did the appellant allege that that amount was in controversy. Further, stated

(Footnote 46—Continued)

the Court, we cannot reasonably say that the complaint otherwise indicates "that the matter in controversy exceeds the value of \$10,000 . . . We conclude that the requisite jurisdictional amount does not appear affirmatively on the face of the complaint as it must in order for the district court to have jurisdiction." *Richardson v. Sokol*, 409 F. 2d. 3, April 9, 1969. The Supreme Court declined to accept an appeal. *Richardson v. Sokol*, 396 U.S. 949, November 24, 1969.

"In consequence of a directive by President Kennedy this authority to certify the expenditure of funds, and all other authorities which the Director is empowered to delegate, have been delegated to the Deputy Director. President Kennedy wrote the Director on January 16, 1962:

As head of the Central Intelligence Agency, while you will continue to have over-all responsibility for the Agency, I shall expect you to delegate to your principal deputy, as you may deem necessary, so much of the direction of the detailed operation of the Agency as may be required to permit you to carry out your primary task as Director of Central Intelligence. . . .

In consequence of this directive and in accordance with legal opinions by the Comptroller General of the United States (41 Comp. Gen. 429, January 2, 1962, set out at page 195 of PART VIII), the Department of Justice, and the General Counsel of CIA, Director John A. McCone on April 2, 1962, delegated to the Deputy Director

all authorities vested in me by law or by virtue of my position as Director of Central Intelligence and head of the Central Intelligence Agency, including, but not limited to, the certification authority set forth in section 8(b) of the Central Intelligence Agency Act of 1949, as amended, except for any authorities the delegation of which is prohibited by law.

This delegation has been continued by succeeding Directors and is set forth in an Agency regulation.

The Director's action of April 1962 delegated, in addition to the authorities normal to the conduct of a government agency and the authority to certify the expenditure of confidential funds under section 8, the administrative authorities in sections 4, 5 and 8 of the CIA Act, the authority in section 7 of the Act concerning the entry of aliens, and the authority, in section 2 of the Foreign Espionage Agents Registration Act (70 Stat. 899, P.L. 84-893, August 1, 1956, 50 U.S.C.A. 851, extracted at page 134 of PART VI), to exempt from registration persons who have been instructed or assigned in the espionage, counterespionage, or sabotage service or tactics of a foreign country or political party. Additionally the Deputy Director is authorized to exercise the authority in section 142(e) of the Atomic Energy Act of 1954 (68 Stat. 919, P.L. 83-703, August 30, 1954, 42 U.S.C.A. 2162(e), extracted at page 121 of PART VI) to make joint determinations with the Atomic Energy Commission for the removal from the Restricted Data category of information concerning the atomic energy program of other nations. The authority of the Director under section 102(c) of the National Security Act of 1947 to terminate employment of CIA personnel has been exercised only by the Director.

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⁴⁸ Funds to be accounted for solely on the basis of such certificates are known as "unvouchered" or "confidential" funds. Statutory authority for the use of such funds has a long history in this country. The secret journals of the Continental Congress record numerous appropriations for military expenditures where the provisions for accounting were left to someone's absolute discretion or were omitted entirely. The current law authorizing their use by the President and the Secretary of State "for the purpose of intercourse or treaty with foreign nations" (31 U.S.C.A. 107) derives from a statute of 1793. For other examples in existing law of authority for the use of confidential funds see 10 U.S.C.A. 7202 (Secretary of Navy), 42 U.S.C.A. 2017(b) (Atomic Energy Commission) and 28 U.S.C.A. 537 (Federal Bureau of Investigation). See also the classified *Historical Study of the Use of Confidential Funds* (1953) compiled by the Office of General Counsel, CIA.

Because these funds are "to be accounted for solely on the certificate of the Director," any audit of expenditures of those funds by the Comptroller General of the United States would be limited to determining that such certifications had been made. In practice the Comptroller General does not conduct such audits; certifications made pursuant to section 8(b) nevertheless are retained as permanent Agency records.

Section 66a of Title 31 of the Code, enacted in 1950, provides that the "head of each executive agency shall establish and maintain systems of accounting and internal control designed to provide . . . adequate financial information needed for the agency's management purposes" and "effective control over and accountability for all funds, property and other assets for which the agency is responsible, including appropriate internal audit." In compliance with section 66a, Agency components conduct comprehensive audits of all such funds, property and other assets.

⁴⁹ As enacted in 1949, the current section 9 was section 11. It was designated as section 9 by P.L. 85-507 (Footnote 12). As enacted in 1949, section 9 provided:

SEC. 9. The Director is authorized to establish and fix the compensation for not more than three positions in the professional and scientific field, within the Agency, each such position being established to effectuate those scientific intelligence functions relating to national security, which require the services of specially qualified scientific or professional personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this section shall not be less than \$10,000 per annum nor more than \$15,000 per annum, and shall be subject to the approval of the Civil Service Commission.

The smaller amount was increased from \$10,000 to \$13,100 by P.L. 81-697 (64 Stat. 450, August 16, 1950). Section 9, as amended, was repealed in 1954 by section 601 of P.L. 83-763 (68 Stat. 1105, September 1, 1954), increases in compensation rates for government employees having obviated the need to compensate scientific personnel at rates higher than those applicable to General Schedule employees. See page 116 of PART VI as to more recent legislation concerning scientific pay rates.